IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1334 OF 2003

Mr.Brajpal Singh .. Petitioner
Versus
State of Maharashtra & Ors. .. Respondents

Mr.G.D.Utangale i/b. M/s.Utangale & Co. for petitioner
Mr.G.K.Tripathi i/b. Anoopkumar Sharma for respondent No.3
Mr.R.Y.Mirza, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 8th December 2005.

P.C.

. Heard Mr.Utangale in support of this petition and Mr.Tripathi holding for Mr.Sharma, Advocate appearing for respondent No.3 and A.P.P. for State.

2. Upon a complaint which is filed in the year 1991 in the 33rd Court Ballard Pier process

was issued. Case is pending admittedly for the last 12 years. Petitioners firstly applied for discharge on the ground that the trial has been unduly delayed and that mandate of speedy trial enshrined in Article 21 of the Constitution of India has been violated. That application was rejected by the Trial Court and the order came to be confirmed by the revisional court. That application for discharge itself was made on 16th February 2000.

3. The apprehension expressed by Mr.Utangale is that petitioner has been dragged in a criminal court for a purely civil matter, inasmuch as, the second respondent who is a company with which petitioner was associated for some time and the original complainant have compromised the matter. Consent terms are filed in the civil court. Upon payment of the amounts mentioned therein all proceedings including criminal complaint was to come to an end. That agreement having been

reached, this is a fit case where the petitioner should be discharged from the criminal proceedings.

4. In my view, in the complaint which was instituted 12 years ago and in which application for discharge is made in the year 2000 it is not necessary to scrutinise the materials to find out whether prima facie any offence is disclosed as against petitioner. Nearly 12 years have gone by the institution of complaint and the order issuing process. No useful purpose will be served by going into these issues at this belated stage. Petition, therefore, dismissed being belated.

5. However, dismissal of the present petition would not constitute a bar for petitioner to urge before the trial court that the complaint as against him should be dismissed not only on the ground that it does not disclose

any offence but monies which were to be recovered and the claims pertaining thereto being the subject matter has already been settled. In my view, to protect interest of petitioner, it would be necessary to direct the trial court to dispose of the complaint within a period of three months from the date of receipt of a copy of this order. So also the petitioner would be at liberty to approach the trial court seeking exemption from personal appearance and upon such an application being filed, the same shall be dealt with on merits and in accordance with law uninfluenced by this Court's disinclination to interfere. All contentions of both sides on merits are expressly kept open.

(S.C.DHARMADHIKARI, J)